

## Original Research Article

**Abusive of Police Power and Challenges to Prevent Under the Code of Criminal Procedure****1898**

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Prevent**ABSTRACT**

The police as the prime functionaries of the law enforcing agencies are mainly responsible to protect and secure public life and security by ensuring law and order situation. But in performing their functions under different circumstances this force is to endure and comply with various legal and professional complications. For this reason, various questions arise as to the improper and unethical exercise of power, lack of accountability, unlimited power of the police and its misuse etc. The paper tries to find answers to some questions. 1 What the powers of the police under the CrPC?. 2. How they exercised the powers in abusively?. 3. How it may be prevented?. What challenges may be arise to implement this preventive methods?

**1. Introduction**

The basic philosophy of the criminal procedure is to provide the legal course of action for the enforcement of the penal provisions sanctioned by the substantive criminal law. Without criminal law procedure, there would be expense, delay and uncertainty in applying substantive criminal law which would make it difficult to prevent and punish commission of crime and also create the danger that substantive criminal law might become useless or oppressive. In specific terms, the main object of the law of criminal procedure is to provide the means and lay down the methods by which (Akkas, 2016, p. 16):

The facts concerning an offence committed or supposed to committed, may be ascertained as speedily and accurately as possible;

- Persons reasonably supposed to be guilty may be brought before the courts;
- An impartial inquiry before a court may be secured;
- The courts are to reach their decisions after full consideration of all the available and admissible evidence which it may be proper to take; and when there is a conviction, the infliction of the penalty properly ordered by the court is to be secured.

**2. Recognized police powers under the CrPC**

Police is the main law enforcing agency in our country and it is entrusted with the duty to secure public life by maintaining law and order situation of the territory. To ensure the law and order of the country, its first task is to prevent and detect crimes and criminal and apply the legal actions complying with the situation. The police powers under the code of criminal code-1898, are basically arrest the accused person or criminal; investigation, interrogate, make and submit the investigation report; and prevent the offences; and in sometimes their duty may be help to the magistrates in regards to implement the issue of summons and issue of warrant of arrest. In summary, the police powers are as follows:

- *Power of arrest*: The power to arrest of the police are deals with section- 46 to 67 of the CrPC. Accordingly, a person may be arrested by any police officer to whom a warrant of is directed by a competent court. A person may be arrested without a warrant under certain circumstances.

When any person or police officer having authority to arrest, reasonably believes that the person to be arrested has entered into or is within any place the person residing in or being in charge of such place will allow the arresting person or officer free ingress thereto and afford all reasonable facilities for search therein.

- *Power of investigate, interrogate, make and submit the report*: The power to investigate, interrogate, make and submit the investigation report are deals with chapter- XIV, section- 154 to 176. According to this chapter, the police officers are empowered to take cognizance about offences and they have powers and duties to investigate the offences. It begins with the discussion on the duty of the public to give certain offences as well as the duty of village headmen, village accountant etc, to report certain matters to the police officer or magistrate. Then it successively focuses on information to the police in cognizable and non-cognizable offences, powers of the police to investigate offences, the procedure for investigation, and recording of statement and confession of the accused by the magistrate.

- *Prevent of offences*: The power of prevent of offences are deals with chapter-XIII, section- 149 to 153 of the Code of Criminal Procedure- 1898. Accordingly, every police officer may interpose for the purpose of preventing and shall try to his best ability prevent the commission of nay cognizable offence.

### **3. How the recognized powers are misused**

The police are the exercising and maintaining force of criminal law in Bangladesh. They have possessed knowledge about criminal activities in the society, nature and character of the criminals. Only, they have power about the exercising and maintaining of criminal law. So they have enough scope to violate their provisions about exercising and maintaining of criminal law. Their activities about criminal law are biased and in question and also a burning issue. It is hotly debated by intellectual quarters, lawyers and even the general public in Bangladesh (Akkas, 2016, p. 87).

The Constitution is the supreme law of the country and shall prevail over any other law. It is the duty of everyone in the country to adhere to the provisions of the constitution. It is unfortunate that instead of adhering to the provisions of the constitution, the police officers are interested in exercising the powers given to them under the CrPC-1898 without any hindrance (Akkas, 2016, p. 90). As a result, the fundamental rights contained in Articles 27,31,32,33 and 35 of the Constitution are violated by the police (BLAST Vs. Bangladesh 55DLR 363, 2003).

Now, I will describe how the police misused their powers under the context of CrPC-

*Violation of powers under chapter V (Arrest)*: Chapter V of the CrPC are generally described the police powers about arrest of accused person. The arrest of police powers are mainly two types - Arrest in generally and Arrest without warrant. In this context, powers of arrest without warrant are very misused by the police officers and therefore, arrest without warrant under section-54 of CrPC is a burning question. The object of section-54 of CrPC is to give widest powers to the police in cognizable offences, subject to the limitation that powers must be used reasonably and cautiously. The term 'may arrest' under section-54, signify that the powers of arrest is discretionary. And by this context, the police officers arrest the persons, at his own sweet will without any basis of grounds, even that person may be a peace loving citizen of the country (Akkas, 2016). Under eight conditions of section-54, a person may be arrested by a police officer without warrant but from the first condition we find that this condition actually includes four conditions under which a police officer may arrest without warrant and these four conditions are couched in such wards that there is scope of abusive and colorable exercise of power.

Following are the four conditions which are included in the first condition. The police officer may arrest –

- a. any person who has been concerned in any cognizable offence;
- b. against whom a reasonable complaint has been made;
- c. a credible information has been received; and
- d. against whom a reasonable suspicion exists of his having been so concerned in any cognizable offence.

We may say that the word 'concerned' used in first condition is a vague word which gives unhindered power to a police officer to arrest any person stating that the person arrested by him is concerned in a cognizable offence (Saifuzzaman Vs. State 56 DLR 324, 2004) (BLAST Vs. Bangladesh 55DLR 363, 2003).

Besides section-54, section-61 of the said act are misused by the police officers. According to the section, no arrestee can be detained in police custody without the special order of a magistrate under section-167 for more than 24 hours exclusive of the time necessary for the journey from the place of arrest to the magistrate's court (Faruque Mahajan and others Vs. The State , 49 DLR 47, 1997).

But in practical, the police detained the arrestee more than 24 hours without the special order of a magistrate under section-167. Even month to months no news can be found about the arrestee (Saifuzzaman Vs. State 56 DLR 324, 2004).

*Violation of powers under chapter XIV (investigate, interrogate and submit the report):* Chapter XIV of the CrPC consists of investigation about offences, interrogate of the accused and witnesses and submit the investigation report to the magistrate.

Under section-154 and 155 of this chapter, the police officers are empowers to take the information about cognizable and non-cognizable offence. They cannot takes a cryptic and anonymous news which does not specify a cognizable offence (Balgopal Panda Vs. State of Orissa , 1990). But in practical, the police officers takes the cryptic and anonymous news from unknown sources.

Under this chapter, more violated provisions by the police officers are basically investigation the offence, make and submit the investigation report, and interrogate the witness and the accused persons.

1. *Investigation of the offence:* Under this chapter, the police are empowered to investigate the offences. The police can investigate the facts and circumstances of the offences if necessary and to take measures for the discovery and arrest of the offender in spot (Ministry of Law, Justice and Parliamentary Affairs, 1898) (Professore A, 2013). But in practical, the police would not go to the spot investigation and an in-ordinary investigation is undertaken on information received by a police officer, this receipt of information is not a condition precedent for investigation. So, their investigation are biased and in question.
2. *Interrogate of the accused and the witnesses:* The power to interrogate the witnesses are deals with section 160 to 162 of the CrPC-1898. Accordingly, during the investigation the police officer may interrogate the witnesses who are appears to be acquainted with the circumstances of the offences and they cannot forced them to produce or give any statement. But in practical, the police used force to extort statement from the witnesses.

The power to interrogate the accused are provides in section 163 to 167 of the CrPC-1898. Under these provisions, section 167 is more biased. Accordingly, when police officer thinks fits that the investigation cannot be completed in 24 hours, they demand time to the magistrate to detain the accused in theirs custody in favor of interrogate the accused to extort information. As a matter of practice, a police officer makes a prayer to the magistrate for 'remand' stating that the accused is involved in a cognizable offence and for the purpose of interrogation 'remand' is necessary. In practice, an accused is taken on remand only for the purpose of interrogation or for extorting information from the accused through applying torture, though it is not mentioned in section 167 (BLAST Vs. Bangladesh 55DLR 363, 2003).

*Violation of powers under chapter XIII (prevention of offence):* Chapter XIII of the CrPC-1898 provides about preventive action of the police, i.e. police may be take any preventive action to prevent offences. The basic object of the chapter is to prevent the commission of an offence by arresting before hand the person who designs or intends to commit cognizable offence and even arrest the person without warrant (Professore A, 2013).

#### **4. Some Instruction Regarding Section 54 and 167**

The appellate Division referred the verdict of the High Court Division and also ruled parts of sections 54 and 167 as being contradictory to the constitution. The instructions include (BLAST Vs. Bangladesh 55DLR 363, 2003):

- a. Law enforcing agency must not arrest anyone under section 54 to put him/her into detention.
- b. They shall show their identity cards while arresting the person

- c. They shall inform the arrested person the reason of his/her so arrest within three hours
- d. They must inform the relatives of the person arrested from anywhere outside of his/her workplace or house within an hour of such arrest through telephone or messenger.
- e. The detainee shall have the right to consult with his/her lawyer and relatives
- f. If the law enforcing agency want to quiz the person in custody, they must seek permission from the magistrate and the interrogation must held in a room with glass walls inside the prison where the relatives and lawyers of the detainee can be present
- g. If the detainee alleges that physical torture was caused to him at the time of interrogation, then the magistrate shall form a medical board to check up his/her health condition. If the allegation is true, the magistrate shall take action against the responsible person under section 330 of the CrPC.
- h. If the instructions are followed properly, the sufferings and agony of the victim of suspicious arrest would be lessened at a great extend. But, due to different procedural and legal complications the victims of suspicious arrest are still to suffer a lot. The court also ordered not to arrest anyone without having uniform of the law enforcing agency at the time of making arrest. But, arrest without having proper uniform at present has added a great concern for the victim's family and most of such arrest is being made by the police on the ground of political motivation.

## 5. Recommendations

- a. The recommendations to prevent the malpractices of police power are as given below:-
- b. The legislative authority should up to date the existing criminal and penal laws in order to control crimes and for the ends of justice.
- c. Dissemination of Supreme Court directions and guidelines as directed by the Court in making arrest and detention of the person.
- d. Amendment of the existing laws as directed by the Supreme Court.
- e. Separation of the law enforcement activities from investigation by forming an independent investigation cell.
- f. Proper human rights training should be provided to the police for creating awareness.
- g. Restoration of the people's trust in police by initiating various benevolent functions.
- h. The government, media and NGOs should play the positive role in dissemination of public awareness.
- i. Police ombudsmen should be established to overview and evaluate the activities of the police administration.
- j. The principle of equity and fairness should be followed at the time of appointment and promotion of the police personnel.
- k. Police should be kept free in execution of duties from political interference.
- l. Challenges to Implement the Recommendations

There must be a challenge to implement the recommendations for preventing the malpractice of police powers in the context of CrPC-1898. They are as follows:

- a. Every political party wants that the administrative (basically police) branch shall adhere with them and they (police) are used at their(political party) sweet will. So, the police branch cannot free from the political interference.
- b. Every government wants to stay at the centre of the power without any hindrance. So that they wanted to take advantages of the discredit of the police. And at this regards, they are not interested to amend the existing the criminal and penal law.
- c. The Legislative authority cannot go beyond the consent of party leader (Khan, 2018). So, they are not able to amend the existing criminal and penal law at their will.
- d. In general, the judges of the Supreme Court are appointed as politically biased. So, the politically motivated judges are not interested to give directions and guidelines as directed by the Court in making arrest and detention of the person.
- e. General public cannot put faith upon the police branch for their malpractice of exercising powers.
- f. The remuneration of the police are not very high and at present, the expenses of daily life are highly increasing. As a result, police do corruption to lead their life to easily. So, they exercised their powers in abuse.

## 7. Conclusion

Human rights are attached to a person from the time of its birth as human beings are born free and equal in the estimation of rights and dignity. The duty to uphold this right initially lies on the police force and other law enforcing agencies on behalf of the government or state. But sometimes, this force (police) fails to protect the person, property of the person and even in many cases violation of rights of the person is occurred by this force. Because in our country most of the times, the sole of the government does not follow the proper sense of Rule of Law. The police force and other Law enforcing agency are used as a means to substantiate and perpetuate the Rule of the govt. There are many statutory Laws relating to the rights of the people dealing with proper protection and punishment for its violation. But, the implementation and necessary amendment of these statutory Laws are not in satisfied level as the governing wheel of the state is busy to establish Rule of the govt.

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